

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 15th day of April, 1998.

BEFORE

HON'BLE MR. JUSTICE S.R. VENKATESHA MURTHY

H.R.R.P. NO. 1171/97 C/w.H.R.R.P. 1166/97

Between:-

I.R.Cochlo,  
No.18, Mount View,  
Lalitha Mahal Road, Mysore,  
since deceased by L.Rs:-

1. Diana Cochlo, Major.
2. Rohan Cobhlo, Major.
3. Gall Cochlo, Major.
4. Carmen Cochlo, Major.

No.1 wife and Nos. 2 to 4 are children  
of late I.R.Cochlo, No.2 is represented  
by his P.A.Holder N.Vasadev, No. 3 and 4  
by Diana Cochlo.

PETITIONER  
in both

( Sri. U.L.Narayana Rao, Senior Counsel  
for S.A.Nazeer for petitioners )

And:-

1. Smt.Geethadevi Sonthalla,  
Major, w/o Gopala H.Sonathalla,  
No.863, 1st Floor, Narayana  
Shastri Road, Mysore.
2. Sri.Rohitosh Hamir Vasha, Major,  
No.55, Kengal Hanumanthaiah Road,  
Bangalore-27.

3. Sri. G.P.Hameer Wasia, Major,  
No.51, K.H. Road, Bangalore-27.

RESPONDENTS  
in both.

( Sri. M.Papanna for respondent )

HRRP 1171 of 1991 is filed u/s. 115 CPC against the order dated 1-8-1997 passed in R (R) 37/96 on the file of the Prl.District Judge, Mysore, rejecting the revision petition and confirming the order passed in HRC 177/81 dated 25-11-1995 by Prl.I Munsiff, Mysore, allowing partly the petition filed under section 21 (1)(h) of the K.R.C. Act.

HRRP 1166/97 is filed u/s. 115 CPC against the order dt. 1-8-1997 passed in R(R) 28/96 allowing the revision petition and the respondents-tenants are granted two months time to vacate and handover vacant possession of the schedule premises.

These Revisions being reserved for orders this day, the Court made the following:-


ORDER

These two Revisions by the tenant are consolidated for purpose of disposal by <sup>a</sup> common order.

2. The parties are referred to according to their array in the trial court.

3. HRC 177 of 1981 on the file of the Principal Munsiff, Mysore, was filed under

section 21 (1)(h) of the Karnataka Rent Control Act ( hereinafter called the 'Act'). The trial Court directed eviction of the respondent~~s~~-tenant~~s~~ by ~~his~~<sup>same</sup> order dated 25-11-1995 and the/~~was~~ confirmed in Revision ( Rent ) 37 of 1996 by the Principal District Judge, Mysore, directing eviction of the respondent~~s~~-tenant~~s~~ from the entire premises. Earlier the eviction petition ~~was~~ allowed by the trial court, <sup>was</sup> confirmed by the District Court. When the matter came before this Court in HRRP 900 of 1994, this Court, while confirming the reasonableness and bona-fides of the claim for eviction of the respondent~~s~~-tenant~~s~~ directed that the trial court may allow the parties a fresh opportunity of contesting the question regarding partial eviction. Thereafter, both the parties tendered evidence and even a Commissioner was appointed for local investigation. On the basis of the material, the trial court came to the conclusion that only



the front portion of the building could be vacated by the respondent-tenant and the petitioner should fix new doors on either sides of the eastern wall of the open space for providing access to the building <sup>in</sup> and the rear. The tenant as well as the landlord challenged the order of the Munsiff, before the District Judge in Revisions, R(R)P 37/96 and R(R) 28/96 respectively. The learned District Judge consolidating both the Revisions, set aside the order of the learned Munsiff, directing partial eviction and ordered that the entire premises <sup>be</sup> be vacated by the respondent-tenant.

4. In this Revision under section 115 CPC, it is sought to be contended that the learned District Judge could have affirmed the order of the Munsiff, directing partial eviction and should not have reversed it.

5. The petition schedule premises admittedly consists of 2 blocks. The first


2

✓  
~~block~~ <sup>block</sup>, that is the main building, consists of four bed rooms and two attached bath rooms. The first ~~block~~ <sup>block</sup> does not provide for a kitchen and other facilities. The second block which is at the rear of the residential building, consists of a kitchen, and other facilities and was not being used by the tenant at all. The building was admittedly 100 years old. The requirement of the petitioner was to house herself and the members of the family, according to their life style.

6. The respondent-tenant is not admittedly residing in the building and even when it was being used, the rear portion, which the learned Munsiff, thought could be given to the respondent by opening a wall, was never <sup>put to</sup> ~~to be in~~ use by the tenants. Indeed, the tenants apparently were unwilling to use the rear portion. Only the Power of Attorney Holder of the deceased tenant was using the premises, that too for business. The tenant's wife

2

is admittedly residing in Bangalore and her children are abroad. The learned District Judge, who heard the revisions, came to the conclusion that the petitioner and the respondent-tenant belong to different <sup>faiths</sup> ~~fields~~, cannot be asked to share the same building. The learned District Judge also found that the petitioner cannot be asked to confine herself to the main building, which has hardly two bed rooms and two halls wherein the petitioner, her husband, petitioner's son and daughter-in-law and the grant children are to accommodate themselves, besides creating for themselves facilities such as kitchen etc. The learned District Judge also found that without material alterations of the building which is admittedly 100 years old, the petitioner cannot live in the premises. Having regard to the fact that the landlord and the tenant belong to different religions <sup>and</sup> having different customs, they cannot be asked to stay in the




same premises. The learned District Judge also found that there was no material to show that the respondent-tenant would ever come back to stay in the petition premises and consequently found that the tenant's need was virtually non-existent.

7. The question is, what is the extent to which the landlord can be made to alter the premises, to accommodate herself as well as the tenant. In case of partial eviction, what has to be noticed is, whether the bifurcated portion could reasonably be enjoyed by the tenant. This situation would have to be examined from a practical point of view and not as a hypothetical situation. Indeed, any property is, and can be, capable of bifurcation, but it is a question of cost. The respondent-tenant was never using the rear portion. Indeed, the respondent-tenant also aims for the main building and is not interested in <sup>anything else,</sup> ~~job~~, inasmuch as the tenant was not using the premises <sup>for residence</sup> even

2

earlier. There is no obligation in law that the landlord would have to incur such expenditure as is necessary to make the bifurcated portion habitable by the tenant. All that the Court is obliged to see is, whether the premises could be with minimal modification, and minimal expense, made available to the tenant and that that accommodation could be reasonably enjoyed by the tenant. Sub-section (4) of Section 21 of the Act stipulates that the partial eviction that is to be examined by the Court is such as would not cause any hardship either to the tenant or to the landlord. In the instant case, the revisional court has clearly found that the partial eviction from the premises would not satisfy the requirement of the petitioner and that they would be put to hardship. The respondent who is admittedly in affluent circumstances, would not be willing to take the portion of the premises in which is in the rear and had not used even earlier. The finding recorded by the





revisional court which appreciated the evidence tendered cannot be regarded as one calling for interference in a revision under section 115 CPC. No case for interference with the order of the District Judge in Revision has been made out. The respondent-  
does not  
-tenant/really need the premises, ~~and~~ In the circumstances, the Revisions have no merit and have to fail. Accordingly, the Revisions are dismissed.

Sd/-  
JUDGE

SRVMJ :

15-4-1998.

After the orders are passed, learned Counsel  
revision  
for the/petitioners prays that the revision  
petitioner may be granted time to surrender  
possession of the premises. The learned Counsel  
for the respondent opposes the request. Having  
regard to the circumstances, ~~that~~ the petitioner  
must be allowed some time to arrange for shifting  
I am of the opinion that the revision petitioner

should be granted time till the end of November,  
1998 to surrender possession of the premises subject  
to the condition that within six weeks from this  
day, the petitioner files an undertaking before  
the trial court that he shall surrender vacant  
possession of the premises without letting the  
landlord <sup>see out</sup> to execution.

Sd/-  
JUDGE

PV.